

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 703

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE GANG ENFORCEMENT AND
PREVENTION ACT; PROVIDING CRIMINAL PENALTIES FOR RECRUITING OR
SOLICITING A PERSON TO PARTICIPATE IN CRIMINAL GANG ACTIVITY;
PROVIDING CRIMINAL PENALTIES FOR PARTICIPATING IN CRIMINAL GANG
ACTIVITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Code is enacted
to read:

"NEW MATERIAL SHORT TITLE. -- This act may be cited as the
"Gang Enforcement and Prevention Act". "

Section 2. A new section of the Criminal Code is enacted
to read:

"NEW MATERIAL FINDINGS AND PURPOSE. --

A. The legislature finds and declares that it is

1 the right of every person to be secure and protected from
2 intimidation and physical harm caused by the criminal
3 activities of violent groups and individuals. The legislature
4 also finds that the citizens of New Mexico are concerned about
5 the increase in criminal activity that can be attributed to
6 criminal gangs. This criminal activity presents a clear and
7 present danger to public safety and is not the type of activity
8 that is protected by the United States constitution or the
9 constitution of New Mexico.

10 B. The purpose of the Gang Enforcement and
11 Prevention Act is not to interfere with constitutionally
12 protected rights of freedom of speech and freedom of
13 association. Rather, the purpose of the Gang Enforcement and
14 Prevention Act is to deter and punish criminal activity engaged
15 in by criminal gangs. "

16 Section 3. A new section of the Criminal Code is enacted
17 to read:

18 "[NEW MATERIAL] DEFINITIONS. --As used in the Gang
19 Enforcement and Prevention Act:

20 A. "criminal gang" means an ongoing, formal or
21 informal, organization, association or group of three or more
22 gang members:

23 (1) that has a common name or a common
24 identifying sign or symbol; and

25 (2) whose members, individually or

1 collectively, engage in criminal gang activity;

2 B. "criminal gang activity" means a conviction for
3 the commission of one or more of the following criminal
4 offenses:

5 (1) murder in the first degree, as provided in
6 Subsection A of Section 30-2-1 NMSA 1978;

7 (2) murder in the second degree, as provided
8 in Subsection B of Section 30-2-1 NMSA 1978;

9 (3) voluntary manslaughter, as provided in
10 Subsection A of Section 30-2-3 NMSA 1978;

11 (4) aggravated assault, as provided in Section
12 30-3-2 NMSA 1978;

13 (5) assault with intent to commit a violent
14 felony, as provided in Section 30-3-3 NMSA 1978;

15 (6) aggravated battery, as provided in
16 Subsection C of Section 30-3-5 NMSA 1978;

17 (7) shooting at a dwelling or occupied
18 building or shooting at or from a motor vehicle, as provided in
19 Section 30-3-8 NMSA 1978;

20 (8) kidnapping, as provided in Section 30-4-1
21 NMSA 1978;

22 (9) dangerous use of explosives, as provided
23 in Section 30-7-5 NMSA 1978;

24 (10) criminal sexual penetration, as provided
25 in Section 30-9-11 NMSA 1978;

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1 (11) criminal damage to property, as provided
2 in Section 30-15-1 NMSA 1978, when the damage to the property
3 amounts to more than one thousand dollars (\$1,000);

4 (12) graffiti to real or personal property, as
5 provided in Subsection C of Section 30-15-1.1 NMSA 1978;

6 (13) larceny, as provided in Section 30-16-1
7 NMSA 1978, when the value of the property stolen is more than
8 two hundred fifty dollars (\$250);

9 (14) robbery, as provided in Section 30-16-2
10 NMSA 1978;

11 (15) burglary, as provided in Subsection A of
12 Section 30-16-3 NMSA 1978;

13 (16) aggravated burglary, as provided in
14 Section 30-16-4 NMSA 1978;

15 (17) arson, as provided in Section 30-17-5
16 NMSA 1978;

17 (18) aggravated arson, as provided in Section
18 30-17-6 NMSA 1978;

19 (19) bringing contraband into a prison or
20 bringing contraband into a jail, as provided in Section
21 30-22-14 NMSA 1978;

22 (20) possession of a deadly weapon or an
23 explosive by a prisoner, as provided in Section 30-22-16 NMSA
24 1978;

25 (21) assault by a prisoner, as provided in

1 Section 30-22-17 NMSA 1978;

2 (22) aggravated assault upon a peace officer,
3 as provided in Section 30-22-22 NMSA 1978;

4 (23) aggravated battery upon a peace officer,
5 as provided in Subsection C of Section 30-22-25 NMSA 1978;

6 (24) bribery or intimidation of a witness or
7 retaliation against a witness, as provided in Section 30-24-3
8 NMSA 1978;

9 (25) any felony violation of the Controlled
10 Substances Act;

11 (26) attempt to commit one of the first,
12 second or third degree felonies set forth in Paragraphs (1)
13 through (25) of this subsection, as provided in Section 30-28-1
14 NMSA 1978;

15 (27) conspiracy to commit one of the felonies
16 set forth in Paragraphs (1) through (25) of this subsection, as
17 provided in Section 30-28-2 NMSA 1978; or

18 (28) criminal solicitation of another person
19 to commit one of the felonies set forth in Paragraphs (1)
20 through (25) of this subsection, as provided in Section 30-28-3
21 NMSA 1978; and

22 C. "gang member" means a person who:

23 (1) admits that he is a member of a criminal
24 gang; or

25 (2) meets two or more of the following

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1 criteria:

2 (a) a reliable informant identifies the
3 person as a gang member;

4 (b) an informant of previously untested
5 reliability identifies the person as a gang member and the
6 identification is independently corroborated;

7 (c) the person affects the hand signs,
8 symbols or tattoos of a criminal gang and a law enforcement
9 officer has documented in writing the officer's reasonable
10 suspicion that the person is involved in criminal gang
11 activity; or

12 (d) the person has been arrested two or
13 more times while in the company of gang members and the arrests
14 were for one of the offenses set forth in Subsection B of this
15 section. "

16 Section 4. A new section of the Criminal Code is enacted
17 to read:

18 "[NEW MATERIAL] RECRUITMENT OR SOLICITATION OF A PERSON TO
19 PARTICIPATE IN CRIMINAL GANG ACTIVITY--PENALTY. --A gang member
20 who uses threats, intimidation or persuasion to recruit or
21 solicit another person to participate in criminal gang activity
22 is guilty of a third degree felony. "

23 Section 5. A new section of the Criminal Code is enacted
24 to read:

25 "[NEW MATERIAL] PARTICIPATION IN A CRIMINAL GANG--

1 ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED. --

2 A. When a felony, as described in Paragraphs (1)
3 through (28) of Subsection B of Section 3 of the Gang
4 Enforcement and Prevention Act, is committed with the intent to
5 aid and abet a criminal gang with criminal gang activity, the
6 basic sentence of imprisonment prescribed for the offense in
7 Section 31-18-15 NMSA 1978 shall be increased by two years. The
8 sentence imposed pursuant to this subsection shall be the first
9 two years served and shall not be suspended, deferred or taken
10 under advisement; provided that when the offender is a serious
11 youthful offender or a youthful offender, the sentence imposed
12 pursuant to this subsection may be increased by two years.

13 B. When a second or subsequent felony, as described
14 in Paragraphs (1) through (28) of Subsection B of Section 3 of
15 the Gang Enforcement and Prevention Act, is committed with the
16 intent to aid and abet a criminal gang with criminal gang
17 activity, the basic sentence of imprisonment prescribed for the
18 offense in Section 31-18-15 NMSA 1978 shall be increased by four
19 years. The sentence imposed pursuant to this subsection shall
20 be the first four years served and shall not be suspended,
21 deferred or taken under advisement; provided that when the
22 offender is a serious youthful offender or a youthful offender,
23 the sentence imposed pursuant to this subsection may be
24 increased by four years.

25 C. If the case is tried before a jury and if a prima

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1 facie case is established showing that the felony was committed
2 with the intent to aid and abet a criminal gang with criminal
3 gang activity, the court shall submit the issue to the jury by
4 special interrogatory.

5 D. If the case is tried by the court and if a prima
6 facie case is established showing that the felony was committed
7 with the intent to aid and abet a criminal gang with criminal
8 gang activity, the court shall decide the issue and shall make a
9 separate finding of fact thereon."

10 Section 6. SEVERABILITY.--If any part or application of
11 the Gang Enforcement and Prevention Act is held invalid, the
12 remainder or its application to other situations or persons
13 shall not be affected.

14 Section 7. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2003.